

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Gregory Peterson,
Appellant,

v.

Polk County Board of Review,
Appellee.

ORDER

Docket No. 13-77-0770
Parcel No. 020/02255-001-000

On July 16, 2014, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) (2013) and Iowa Administrative Code rules 701-71.21(1) et al. Gregory Peterson was represented by Attorney David Leitner, of Leitner Law Office, West Des Moines, Iowa. Assistant County Attorney Ralph Marasco, Jr., represented the Polk County Board of Review. The Appeal Board, having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Gregory Peterson is the owner of a vacant property located at 16 Indianola Road, Des Moines, Iowa. Peterson protested to the Board of Review claiming the property's assessment was not equitable as compared with assessments of other like property and that property was misclassified under Iowa Code Sections 441.37(1)(a)(1) and (3). Peterson also wrote on the ground provided for error in the assessment; however, his claim was that the property was misclassified. The Board of Review denied the petition.

Peterson then appealed to this Board reasserting his claims.

The subject property is 1.640 acres and classified commercial. The property has been classified commercial since 2010, and prior to that time it was also commercially classified, but was exempt from taxation as it was improved with a church. It was valued at \$138,000 as of January 1, 2013.

Peterson purchased the property in 2009 for \$150,000. Peterson's property at one time was platted to include six residentially platted lots. When he purchased the property there were two buildings on the site but both have been removed. He entered a stipulation in 2011 with the Board of Review regarding the property's assessment. Since that time, however, he contends the property has decreased in value. He explained the City of Des Moines has taken the access to Indianola Road through eminent domain and the property now only has street access from SW 1st Street. He says his counsel told him he does not have access to Indianola Road due to the easement. However, from the time of Peterson's purchase through the time that the City placed an easement on the property through the use of eminent domain, there was no actual physical access from Indianola Road. Nevertheless, Peterson contends the City's new easement prohibits an access point from Indianola Road to the property. The language of the easements states that it prohibits the construction of obstructions without prior approval from the City. (Exhibit 1). It is not clear that it actually prohibits construction of an access. He also stated the property's access is on a very steep grade and the property is on a hill, and he does not believe it is suitable for commercial development.

Peterson listed several properties he considered comparable to his on his petition to the Board of Review. The Board of Review submitted the property record cards for these properties. (Exhibits B-D). Peterson contends the property in Exhibit D is just like his. This property was classified residential, and he believes his property should therefore have a similar classification.

Rod Hervey testified on the Board of Review's behalf. (Chief Deputy at Polk County Assessor's Office). Hervey explained the property has always been commercially classified, but it was exempt from taxation when the church was on it.

Hervey reviewed Peterson's three comparables and explained the differences between them and the subject property. (Exhibits B-D). He explained Exhibit B is a right-of-way owned by the City. It is

also a different size and non-buildable. Exhibit C is land-locked and has no access. Finally, Hervey noted the Exhibit D property classification will be changed to commercial in the future.

Conclusions of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005).

Peterson asserts the property is misclassified and that its actual classification should be residential. The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* IOWA ADMIN. CODE r. 701-71.1 et al. (2011). Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. r. 701-71.1(1). Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. r. 701-71.1(2). Property is to be classified “according to its present use and not according to any highest and best use.” r. 701-71.1(1). “Under administrative regulations adopted by the . . . Department . . . the determination of whether a particular property is ‘agricultural’ or [residential] is to be decided on the bases of its primary use.” *Svede v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). There can be only one classification per property. r. 701-71.1(1).

By administrative rule, residential property

shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods.

r. 701-71.1(4).

Conversely, commercial property


Shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail.

r. 701-71.1(5).

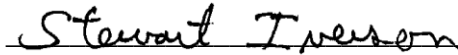
In this case, Peterson essentially argues the property should not be commercially classified because it is less suitable for commercial development due to the City's new easement that potentially restricts access from Indianola Road. However, the easement appears to only require prior written consent of the City before changes can be made to the easement area. (Exhibit 1). Furthermore, the property still has access from SW 1st Street, just off Indianola Road. Additionally, the properties Peterson submitted to support his claim are not comparable and under the Administrative Rule the subject property's primary use is the focus for classification. Peterson failed to show that the property is entirely unsuitable for commercial use. More importantly, he also did not show the primary use of the property is intended for human habitation. No dwelling exists on the property; nor has one been on the property for a number of years. For these reasons, we find that Peterson has not shown the property should be classified residential.

THE APPEAL BOARD ORDERS the 2013 assessment and classification of Peterson's property located at 16 Indianola Road, Des Moines, Iowa, set by the Polk County Board of Review is affirmed.

Dated this 5th day of August 2014.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

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